three decades.[28] At present similar strides seem about to be made through federal use of the taxing power.[29] It would be regrettable if the courts by analysis, similar to that of the principal case, as to what constitutes the power of taxation should emasculate this effective means of achieving desirable results.

TERRITORIAL OPERATION OF WORKMEN'S COMPENSATION ACTS.—In connection with the territorial operation of workmen's compensation acts, it is of the utmost importance to note at the outset that, as a general rule, a court will not affirmatively enforce the act of a foreign state, inasmuch as these contain specific local provisions as to procedure with which the foreign court is unable to comply.[1] But the existence of a compensation act of one state may be a defence in a

[28]For example: animal diseases, 32 Stat. 791, 8 Comp. Stat., 1916, §§ 8698, 8700; grain standards, 39 Stat. 482, 8 Comp. Stat., 1916, §§ 8747½-8747½k; plant quarantine, 37 Stat. 315, 384, 38 Stat. 1165, 8 Comp. Stat., 1916, §§ 8752-8758, 8760-8764; pure seeds, 37 Stat. 506, 8 Comp. Stat., 1916, §§ 8744-7; standard fruit baskets, 39 Stat. 673, 8 Comp. Stat., 1916, § 89071-q; insecticides, 36 Stat. 331, 8 Comp. Stat., 1916, §§ 8765-77; food and drugs, 34 Stat. 768, 39 Stat. 416, 732, 8 Comp. Stat., 1916, §§ 8717-28; meat inspection, 34 Stat. 1260, 8 Comp. Stat., 1916, § 8681; use of narcotics, 38 Stat. 785, § 4, 6 Comp. Stat., 1916, §§ 6287g-q; safety appliances, 27 Stat. 531, and amendments, 8 Comp. Stat., 1916, §§ 8605-23; accident reports, 36 Stat. 356, 8 Comp. Stat., 1916, §§ 8642-7; rates, 24 Stat. 379 and amendments, 8 Comp. Stat., 1916, §§ 8563-8604; hours of service, 34 Stat. 1415, 39 Stat. 61, 8 Comp. Stat., 1916 §§ 8677-80; child labor, 39 Stat. 675, 8 Comp. Stat., 1916, §§ 8819a-F; eight-hour day, 39 Stat. 721; 8 Comp. Stat., 1916, §§ 8680a-d; rebates, 32 Stat. 847, 34 Stat. 587, 8 Comp. Stat., 1916, §§ 8598-99; bills of lading, 39 Stat. 530, 8 Comp. Stat., 1916, §§ 8029-35; prize fight films, 37 Stat. 240, 10 Comp. Stat., 1916, §§ 10416-8; white slaves, 36 Stat. 825, 8 Comp. Stat., 1916, §§ 8812-9; liquors, 37 Stat. 699, 39 Stat. 1069, 8 Comp. Stat. 1916, § 8739.

[29]Bender, *op. cit.*, v-vi. For the use of another phase of the sovereign or police power, namely, rate-making for social adjustment, see Bye, Social Welfare in Rate-Making, 32 Pol. Sci. Quar. 522.

[1]In Loomis *v.* Lehigh Valley R. R. (1913) 208 N. Y. 312, 332, 101 N. E. 907, quoting Galveston, *etc.*, Ry. *v.* Wallace (1912) 223 U. S. 481, 490, 32 Sup. Ct. 205, the court said: "When a statute creating the right provides an exclusive remedy, to be enforced in a particular way, or before a particular tribunal, the aggrieved party will be left to the remedy given by the statute which created the right." Bradbury in 9 Neg. Comp. Cas. Ann. at page 931 says: "Under the New Jersey Act claims for compensation are decided by the courts of New Jersey. Therefore, when a claim was made in the New York court under the New Jersey Act no great difficulty was found in applying the New Jersey statute in the same way that it would be applied in the New Jersey courts. But much more serious difficulty would arise should attempt be made in New York to apply the law of Ohio, for instance. In that state the statute provides that the administration of the law is confined to the Industrial Commission of Ohio. Under the case already cited [Loomis *v.* Lehigh R. R., *supra*] it would appear that the Ohio Industrial Commission would have exclusive jurisdiction. This same difficulty would be present in almost every instance where an attempt was made in one state to enforce the compensation law of another state." As a matter of fact the New York courts have since refused to enforce even the New Jersey act. Lehmann *v.* Ramo Films (1915) 92 Misc. 418, 155 N. Y. Supp. 1032; McCarthy *v.* McAllister Steamboat Co. (1916) 94 Misc. 692, 158 N. Y. Supp. 563; Verdicchio *v.* McNab & Harlan Mfg. Co. (1917) 178 App. Div. 48, 164 N. Y. Supp. 290. However, if the afore-

second state, either to a suit at common law in the second state,[2] or to a claim for compensation under the act of the second state.[3] In view of this negative operation of compensation acts it is essential that some definite principles be formulated to determine what compensation act is to be recognized as binding on the employer or employee. For instance, a workman enters into a contract of employment in state A, in reference to work to be done principally in state B, and is injured in state C. Which state's act is to be applied? This suggests the problems confronting the courts.

In *Gould's Case,*[4] apparently the first American authority on this question, the court adopted in connection with the operation of the Massachusetts statute, the rule that the law of the place of the injury governs the right to recover. However, when next the question arose, the doctrine of this case was repudiated, and it was held in effect that workmen's compensation is a regulation of the contract of employment. The courts, acting on this theory, disregarded the place of injury and applied the *lex loci contractus.*[5] But in a few cases where the contract was made in reference to performance in another state, the law of the place thus designated was given preference over the *lex loci contractus.*[6] The recent case of *Banks* v. *Howlitt* (Conn. 1918) 102 Atl. 822 represents an application of this most recent tendency. The plaintiff's decedent entered into an agreement in New York to work in Connecticut where he was killed. The court of Connecticut allowed the plaintiff to recover under the act of that state, relying upon the fact that the place of principal performance was within that jurisdiction.[7]

The result thus reached may, in view of the adherence of the courts of Connecticut to the contract theory,[8] best be explained as a choice under that theory between the place of making and the place of principal performance. This view of the decision is the more probable in that Connecticut applies in regard to the obligations arising under contracts in general the law of the place of performance.[9] The decision, therefore, represents a logical application of the contract theory.[10] But the interesting question suggested is,

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mentioned difficulties could in any instance be overcome, there would be no objection to the affirmative enforcement of a foreign statute. See Kennerson *v.* Thames Towboat Co. (1915) 89 Conn. 367, 94 Atl. 372; Douthwright *v.* Champlin (Conn. 1917) 100 Atl. 97.

[2]Pendar *v.* H. & B. American Machine Co. (1913) 35 R. I. 321, 87 Atl. 1; *cf.* Schweitzer *v.* Hamburg Amerikanische P. A. C. (1912) 149 App. Div. 900, 134 N. Y. Supp. 812; 18 Columbia Law Rev. 377 and cases cited therein.

[3]Connor, Employers' Liability and Workmen's Compensation and Liability Insurance § 19.

[4](1913) 215 Mass. 480, 102 N. E. 693.

[5]Deeny *v.* Cobb Lighterage Co. (1913) 36 N. J. L. J. 121; Kennerson *v.* Thames Towboat Co., *supra.*

[6]Gardner *v.* Horseheads Construction Co. (1916) 171 App. Div. 66, 156 N. Y. Supp. 899; Johnson *v.* Nelson (1915) 128 Minn. 158, 150 N. W. 620; see Foughty *v.* Ott (W. Va. 1917) 92 S. E. 143.

[7]Davidheiser *v.* Hay Foundry & Iron Works (1914) 37 N. J. L. J. 119 is authority in support of the principal case.

[8]Kennerson *v.* Thames Towboat Co., *supra.*

[9]Beggs & Co. *v.* Bartels (1900) 73 Conn. 132, 46 Atl. 874.

[10]27 Yale Law Journal 707.

whether, regardless of divergent views as to the law governing the obligation of contracts, the same result should not have been reached. In other words, should not the law of the place of principal performance be applied in every case as the law of the place most concerned with the relationship of master and servant?

The question raised in the preceding paragraph cannot be answered without some examination of the origin and scope of workmen's compensation acts; for the courts will naturally adopt that theory which best effectuates the real purpose of such legislation. The common law theory of the reciprocal rights and liabilities of master and servant was a doctrine of individual rights arising from the relationship which the contract of hire created.[11] The servant could not recover unless the master was negligent and he himself was not. But modern industrial conditions showed clearly that many injuries arising in the course of the employment, although not due to the fault of either master or servant, are unavoidable incidents of industrial activity; in fact, negligence itself may be said to be such an incident.[12] A number of jurisdictions, recognizing the inadequacy of the common law, adopted workmen's compensation acts, whereby the burden of industrial injuries is thrown upon the employer as an expense of production and thus shifted to the consumer on whom in justice it should rest.[13]

To lay down a rule that the injury must occur within the territorial limits of the state vitiates the purpose of workmen's compensation in two respects: it gives a remedy in the forum when the burden should be borne by the industry of another jurisdiction,[14] and gives no remedy for injuries which are a proper charge on the industries of the forum.[15] Similarly, the contract theory, in jurisdictions where the rule of *lex loci contractus* applies, fails to effectuate the purpose of workmen's compensation, in that the place where the contract is created as a matter of law may have no relation to the place where the industrial activity of the workman takes place. The application of the contract theory in those jurisdictions which adhere to the rule that the obligation of contracts is governed by the law of the place of performance reaches a proper result, since the state within whose territorial limits industrial activity—the performance of the contract—takes place would seem to be the place where legislation should be made governing such activity and where rights and duties under such legislation should be adjudicated. But it would seem more natural to say that a regulation of industrial activity is a regulation of the relationship between master and servant and

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[11]10 Columbia Law Rev. 1 *et seq.*

[12]25 Harvard Law Rev. 129 *et seq.*

[13]25 Harvard Law Rev. 129 *et seq.*; Rheinwald *v.* Builders' Brick & Supply Co. (1915) 168 App. Div. 425, 153 N. Y. Supp. 590.

[14]This would be the result where the workman is principally employed in state A and injured in state B. If he is allowed compensation in state B, it would be a charge on the industry of state B whereas his services are really in connection with that of state A.

[15]In Kennerson *v.* Thames Towboat Co., *supra,* at p. 375 the court said: "If our Act intends its contracts of employment to include compensation for injuries occurring only within our jurisdiction, it manifestly defeats its own ends. In that case the employer may not charge to the industry the compensation for injuries occurring without the State, and the employee or his dependents may not collect the same."

that where this relationship is domesticated the rights and liabilities under workmen's compensation attach.[16] A court adopting this point of view may, in every case, reach a just result, regardless of its local law concerning the obligation of contracts.

The recent tendency in legislation has been to recognize that workmen's compensation is essentially in the nature of industrial insurance, by providing for a fund owned or controlled by the state.[17] Under statutes of this character it is highly probable that the state intends that the premiums paid by those carrying on industries within the state should be used to pay those workmen only who are engaged in such industries. It is submitted that the trend is in favor of employing workmen's compensation as a means of regulating local industry, and that the courts will ultimately adopt this point of view.

ACQUISITION OF DOMICIL IN FOREIGN COUNTRIES.—Many important questions are solved with reference to the legal status of the person or persons whose rights or liabilities are the subject of controversy. Thus the right of an individual to make a will[1] disposing of personally, the validity of a particular marriage,[2] jurisdiction sufficient to grant a divorce[3] will depend on the legal relationship between one or more persons and a particular jurisdiction. It was generally agreed up to within the last one hundred years that one who was domiciled in a particular locality should be governed by[4] the laws of that locality in respect to such matters as those mentioned above. Domicil was defined as residence within the locality with the intention permanently to remain there.[5] More recently, however, many European nations have either discarded domicil as the test of the existence of a legal relationship sufficient to determine civil status and substituted therefor the criterion of nationality,[6] or have required, as has been thought, that some further step beyond permanent residence be taken in order that this relationship should exist.[7] The common law, on the other

[16]In Kenny *v.* Union Ry. (1915) 166 App. Div. 497, 152 N. Y. Supp. 117, at p. 500, the court said: "While the relation of employer and employee as defined by the statute must have existed at the time deceased sustained the injury, it matters not whether the employment was under a contract concededly valid as to both parties, or under a contract voidable at the election of the employer, or whether the liability of the employer for wages was fixed, or determinable under *quantum meruit*. The vital question is whether the relation of employer and employee existed between the deceased and the railway company, and the facts being conceded, the question is one of law."

[17]Connor, *op. cit.* § 29.

[1]Goods of Maraver (1828) 1 Hagg. Ecc. 498; Mayor of Canterbury *v.* Wyburn [1895] A. C. 89.

[2]Sottomayer *v.* De Barros (1877) 3 Prob. D. 1; *cf.* Harral *v.* Harral (1884) 39 N. J. Eq. 279.

[3]Le Mesurier *v.* Le Mesurier [1895] A. C. 517; Hunt *v.* Hunt (1878) 72 N. Y. 217.

[4]Westlake, Private International Law (5th ed.) Chapters I-II, contains an historical résumé of the conflicting theories of legal status.

[5]For various definitions of domicil see Dicey, Conflict of Laws (2nd ed.) App. Note 6.

[6]Westlake, *loc. cit.*

[7]See Collier *v.* Rivaz (1841) 2 Curt. Ecc. 855; but see Bremer *v.* Freeman (1857) 10 Moore P. C. 306, 363; Dupuy *v.* Wurtz (1873) 53 N. Y. 556; Harral *v.* Harral, *supra.*